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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED  
CLERK**

10/4/2018 4:38 pm

**U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE**

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:  
UNITED STATES OF AMERICA, :  
:  
v. : 13-CR-00607 (JFB)  
:  
KENNER, et al., : October 1, 2018  
:  
Defendants. : Central Islip, New York  
:  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE JOSEPH F. BIANCO  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: UNITED STATES ATTORNEY  
BY: MATTHEW HAGGANS, ESQ.  
MADELINE O'CONNOR, ESQ.  
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Saratoga Springs, New York 12866

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service

1 (Proceedings began at 2:04 p.m.)

2 THE CLERK: Calling case 13-CV-607, USA v. Kenner  
3 and Constantine.

4 Counsel, please state your appearance for the  
5 record.

6 MR. HAGGANS: Good afternoon, Your Honor. Matthew  
7 Haggans for the United States with Madeline O'Connor and  
8 Diana -- Diane Leonardo.

9 THE COURT: Good afternoon.

10 MR. TALKIN: Good afternoon, Your Honor. San Talkin  
11 for Mr. Constantine who is on the telephone.

12 THE COURT: Good afternoon.

13 MR. KENNER: Good afternoon, Your Honor. Phillip  
14 Kenner representing myself. I'm pro se.

15 THE COURT: Good afternoon. Mr. Constantine, can  
16 you hear everybody okay?

17 MR. CONSTANTINE: Yes, Your Honor. Thank you.

18 THE COURT: So I scheduled the status conference.  
19 We have a couple of pending issues. Some relate to Mr.  
20 Constantine and some relate to Mr. Kenner, and I'll see if  
21 there's anything else while we have everybody here but the  
22 first thing I want to address obviously is the forfeiture  
23 motion and I did receive, Mr. Talkin, your letter on the 20th  
24 indicating that some issue had arisen. So do you want to  
25 explain to me what the issue is?

1 MR. TALKIN: Yes. Yes, Your Honor. It's not a  
2 representation issue or anything. It's just -- it's simply --  
3 and first of all, the reason I wanted to come in is I know  
4 Your Honor has granted extensions on this and it's been a  
5 complicated issue. Unfortunately the issue that arose is that  
6 even though I have been able to brief the issues that are the  
7 legal issues, the accounting issues are something that Your  
8 Honor has gotten an expert recently involved and we're working  
9 through.

10 However, my understanding of the accounting issues  
11 were that that was a much smaller issue than what really  
12 exists. In other words, there's much more work that needs to  
13 be done than I thought had to be based on my understanding of  
14 the accounting issues. So that's the issue that arose.

15 I've discussed it with my client and then I'll end  
16 the accountant on a way to resolve it. In other words, we  
17 believe that Mr. Constantine needs to come to New York and sit  
18 down with the accountant for a week to go through the  
19 thousands of transactions that occurred in this case and  
20 that's the only way to really resolve this. The accountant of  
21 course is willing to do that but because right there's the  
22 extension tax season he won't be available until sometime  
23 after October 15th.

24 It's my understanding that Mr. Constantine and the  
25 accountant have spoken to each other. They're going to begin

1 the process on the telephone after the 15th and hope to meet  
2 towards the end of October, early November, in order to  
3 accomplish going through each and every transaction in this  
4 case. Then that will arm me with information to deal with but  
5 I think Mr. Constantine's central issue of forfeiture which is  
6 the Honeycutt issue. There are other smaller ancillary issues  
7 but that's the biggest one.

8           So once that happens we -- I'll get the report and  
9 I'll get to work on plugging them into the law that's already  
10 been laid out.

11           There's a couple of complicating factors just that  
12 are all on my side on that. I start a Southern District case  
13 November 14th and then starting -- I'm going to start picking  
14 a jury in December in New York County on a murder case, a cold  
15 case that -- I think this jury selection is only going to take  
16 a week and then we're going to start up on January 7th because  
17 it's going to be a very long trial. So I -- I guess one of  
18 the reasons I wanted to be here is to tell Your Honor this  
19 isn't anything that -- it's no -- it's certainly not a delay  
20 by Mr. Constantine and it's not a delay by me. It's just this  
21 is a mammoth project and I really think that this is the kind  
22 of thing that if you had ten lawyers working around the clock  
23 and ten accountants it would be hard to do and when you have  
24 one accountant and one lawyer doing it it's even harder.  
25 We're doing it. We're going to get it done but I just think

1 we owe it to Your Honor to let you know that the extensions  
2 you've given us are not -- we didn't -- they're not in waste.  
3 It's just we're trying to get something done that's very  
4 difficult to do.

5 THE COURT: I know but -- I can't put off this until  
6 after that trial in January.

7 MR. TALKIN: I understand. What I'm trying to get  
8 done is we're hoping -- if I can get the report by sometime  
9 into mid November hopefully my trial will be done by  
10 Thanksgiving and then right after Thanksgiving within a week  
11 I'll turn it around to Your Honor. That's, you know -- and  
12 it's going to be really hard to do that but I'm going to get  
13 it done.

14 THE COURT: Okay. Mr. Haggans, do you want to be  
15 heard on that?

16 MR. HAGGANS: Just briefly, Your Honor. I think the  
17 Court knows probably better than I do that the history in this  
18 case. We're about to enter our fortieth month post verdict.  
19 The Government filed its forfeiture brief in October 2016, two  
20 years ago, and I joined the case I think three or four months  
21 after that. About 18, 20 months post conviction and I've been  
22 on the case about 18 or so months.

23 Mr. Constantine is at liberty. It's in his interest  
24 to continue these proceedings as long as possible to avoid  
25 imposition of judgment. This I believe is the sixth request

1 for an extension from Mr. Constantine just in the past year.  
2 Really in the past eight months. We initially set a deadline  
3 back for February 28, 2018 and it's been a regular request for  
4 an extension since then.

5 Mr. Talkin --

6 THE COURT: Hold on a second.

7 [Pause in proceedings.]

8 THE COURT: Okay. Go ahead.

9 MR. HAGGANS: I understand to some extent where Mr.  
10 Talkin is coming from. He's also joined the case after a lot  
11 of these issues have transpired but that again is in no small  
12 part due to Mr. Constantine and his replacement of his  
13 attorneys. The Government opposes the extension request. We  
14 would seek the Court's leave to insure that we have sufficient  
15 time to reply to any of the opposition papers once they're  
16 ultimately filed and we would like to be able to respond to  
17 both sets of papers at the same time.

18 I believe as the Court knows Mr. Kenner has put in  
19 fairly voluminous filings in opposition and it's my  
20 understanding that he intends to supplement those filings. I  
21 have every expectation that that supplement will also be  
22 voluminous. So the Government would strongly prefer to be  
23 able to reply to all of the defense filings in one go. Thank  
24 you, Judge.

25 THE COURT: Well, I mean that -- I understand your

1 concerns just overall and obviously I've been trying to do the  
2 best I can to get this case moving forward. I won't rehash  
3 all the different issues that have come up. It's not as if  
4 this has been the only issue for the entire period of delay  
5 but it would make no sense for me -- the accounting piece I  
6 think obviously is an important piece for purposes of  
7 forfeiture and it's not Mr. Talkin's -- it's not in his  
8 control and I assume it's not in Mr. Constantine's control if  
9 the accountant thinks he needs more information. So I don't  
10 view this as simply an effort to delay.

11 But I need to resolve this in a way that minimizes  
12 the amount of time. So one option would be to move forward  
13 with the rest of it and just leave this piece outstanding but  
14 the Government is suggesting you don't want that. I mean I  
15 could try to do that but you would rather they respond all at  
16 once. Right? Isn't that what you just said?

17 MR. HAGGANS: When Your Honor says the rest of it,  
18 does that mean everything other than forfeiture?

19 THE COURT: No. That means everything other than  
20 the accounting piece on the forfeiture issue just to make sure  
21 that -- it's not ultimately going to advance the decision  
22 because I have to wait the accounting piece but if you're  
23 concerned that this is a second endless delay that would be  
24 one possibility. I'm not suggesting that's ideal either  
25 because in my view it's not going to ultimately necessarily

1 speed up the process but if you wanted that I would be willing  
2 to consider that.

3 In other words, you're saying we don't want to  
4 respond to Mr. Kenner until -- because he's going to  
5 supplement when he gets the accounting piece and -- but --  
6 which is fine. I'm willing to go along with that but there  
7 would be no reason why whatever other issues are not -- are  
8 not a part of the accounting piece could move forward on the  
9 briefing both from the Government's end and from anyone else's  
10 end.

11 MR. HAGGANS: Could we just have a moment, Your  
12 Honor?

13 THE COURT: Yes.

14 [Pause in proceedings.]

15 MS. O'CONNOR: Your Honor, I believe what Mr.  
16 Haggans was trying to convey to the Court is we currently  
17 received Mr. Kenner's submission and it's 217 pages and  
18 thousands of pages of exhibits. Our response to that portion  
19 would be due October 21st. In conversations with Mr.  
20 Constantine's attorney it's our understanding Mr. Kenner  
21 intends to supplement his brief once there's the accounting  
22 portion.

23 So just for the ease of responding to everything  
24 because it's going to be a duplication of issues, it's  
25 preferable if we just do one response brief to both Mr.



1 Constantine and Mr. Kenner's initial brief and his  
2 supplemental brief.

3 THE COURT: Once everything has been done, including  
4 the accounting?

5 MS. O'CONNOR: Yes, Your Honor, with the accounting.

6 THE COURT: Okay. That's fine but that's the only  
7 other way -- I'm not going to move forward obviously without  
8 allowing them the chance to put in the accounting information.  
9 I think that would be unfair but if the Government does not  
10 want to proceed piecemeal then the only thing left then, Mr.  
11 Talkin, is to try to figure out a schedule that minimizes the  
12 amount of time.

13 So you said early -- what did you say, early  
14 December? Is that what you're proposing?

15 MR. TALKIN: Assuming that I would get the  
16 accounting by mid November I'm hoping that that trial will be  
17 over by the 28th or the 29th. Then I am picking a jury on the  
18 3rd, 4th but that's -- picking a jury doesn't take preparation  
19 so hopefully what I can do is in those last few days of  
20 December -- excuse me, last few days of November plug in the  
21 accounting to what's already done and then maybe by the end of  
22 the week when we start picking, which is the 7th, in the  
23 interim since it doesn't take overnight preparation I can work  
24 on this in the evenings and get it done by the 7th.

25 THE COURT: Okay. So the opposition will be due

1 December 7th. I want you to emphasize to the accountant and  
2 Mr. Constantine this is important from your end. You need to  
3 work with the accountant. Mr. Talkin said you're going to  
4 speak to him over the phone initially and then you're going to  
5 set up a time to come to New York to spend a week with him.  
6 You have -- you and Mr. Talkin need to coordinate with the  
7 accountant the timing of that to insure that the accountant is  
8 going to be able to turn a report around by like November  
9 15th. Is that -- when would you need it, Mr. Talkin?

10 MR. TALKIN: Maybe he can go another week because  
11 I'll be on trial but around then. That's a good date to give  
12 us some leeway.

13 THE COURT: Okay So, Mr. Talkin, you talk to Mr.  
14 Constantine and the accountant, whatever schedule needs to be  
15 done to get you that report. If the accountant says I'm not  
16 going to be able to do the report then we have a problem and I  
17 want to maybe set up another conference. I'm going to assume  
18 if I don't hear from you that you've reached an agreement with  
19 the accountant where he's going to get you that report.

20 MR. TALKIN: Understood.

21 THE COURT: All right. If you could provide -- when  
22 you get the report to Mr. Kenner -- is that --

23 MR. TALKIN: The accountant is working on behalf of  
24 both defendants. So I'll make sure he gets it.

25 THE COURT: Mr. Kenner, my hope would be that you

1 could then also put in your supplement sometime in December on  
2 the same schedule. If you have any trouble with that you can  
3 let me know but that would be my hope. Okay?

4 MR. KENNER: Not a problem, Your Honor. I've in  
5 fact in the single meeting I was able to have with the  
6 forensic accountant and Mr. Talkin I've already turned over  
7 the deliverable -- excuse me, the documents the accountant  
8 would need to piece together the individual forensic  
9 accounting for some of the supplemental items in my brief.

10 THE COURT: Okay. All right. So if the Government  
11 December 7th, when -- when does the Government need to  
12 respond?

13 MS. O'CONNOR: January 11th, Your Honor.

14 THE COURT: Okay. That's fair. January 11th.  
15 Then, Mr. Talkin, you're --

16 MR. TALKIN: I'll be off Fridays for argument to --  
17 their motion, my reply.

18 THE COURT: I got it.

19 MR. TALKIN: Unless you want to give me a sur reply.

20 THE COURT: I got mixed up.

21 MR. TALKIN: I didn't think so.

22 THE COURT: Right. So let's pick a Friday. It can  
23 be the 25th or the 1st.

24 MR. HAGGANS: The 25th would be very bad for me.

25 THE COURT: Bad you said? How about February 1st?

1 MS. O'CONNOR: That's fine with the Government, Your  
2 Honor.

3 MR. TALKIN: That's fine.

4 THE COURT: February -- we'll have argument on the  
5 forfeiture motion on February 1st at 1:30.

6 Let me just deal with the other issues. I want to  
7 try to deal with them quickly because I saw that I have  
8 lawyers back here. Judge Tomlinson is picking a jury for me  
9 and some issue came up. I have to address that so I don't  
10 keep everybody waiting.

11 But, Mr. Kenner, a couple of things. First, I think  
12 as you know the Bureau of Prisons had an issue with you  
13 getting a hard drive because it's not consistent with their  
14 regulations. So I don't know if there's another piece of  
15 technology that's consistent with their regulations that could  
16 address what your concern was about having a backup. So do  
17 you have any alternative proposal?

18 MR. KENNER: In fact, Your Honor, if we could have a  
19 few minute ex parte I had a couple of other related issues  
20 with respect to the MDC facility that we did need to discuss  
21 today. It came up in the last few days and it became very  
22 urgent with respect to my ongoing preparation for the elements  
23 of the case. But I did -- but I have become very familiar --  
24 I became aware of the denial of the backup hard drive.

25 THE COURT: Okay.

1 MR. KENNER: As Your Honor may remember, that issue  
2 came up about a year ago because --

3 THE COURT: Before we deal with other issues that  
4 you have, what's the answer to that issue? Is there an answer  
5 to that issue or not?

6 MR. KENNER: Well, Your Honor, I'm the only person  
7 at MDC that deals with this and as Your Honor knows I have a  
8 laptop that I work on every day and about a year ago, plus or  
9 minus, the backup hard drive that I had had for several years  
10 from the Government disappeared at MDC with no explanation or  
11 no answer from the facility. We're really not looking to  
12 transport the backup hard drive throughout the facility in  
13 concurrence with their concerns for distribution of  
14 contraband. In fact, the backup --

15 THE COURT: What's -- let me --

16 MR. KENNER: -- hard drive would sit with the hard  
17 drive -- with this.

18 THE COURT: I don't want to get into a discussion  
19 with you about this because I've already told you my decision  
20 is I'm not going to order them to provide a hard drive in the  
21 jail. That's inconsistent. They've articulated the reasons  
22 why they don't like having it in the jail and I believe those  
23 reasons are valid.

24 What I'm suggesting to you -- so stop arguing to me  
25 about why you should be able to have it anyway. If there's

1 some other proposal, some other piece of technology that you  
2 have in the jail or the alternative would be to -- whatever  
3 you've done to -- I assume that Mr. Siegel could keep that  
4 hard drive at his office.

5 To the extent that you're worried that you're going  
6 to lose materials that you worked on I'm sure there can be a  
7 way arranged so that in some manner it was backed up in a way  
8 that he could keep a separate copy of it in his office.

9 MR. KENNER: Your Honor, I guess as a solution --  
10 and I didn't mean to insult the Court with my --

11 THE COURT: It's not insulting. I'm just trying to  
12 save time.

13 MR. KENNER: Yes, Your Honor. I was just suggesting  
14 that two hard drives would remain together under lock and key  
15 at all times at the MDC. But perhaps once every few weeks and  
16 certainly at some point soon if Mr. Siegel or one of the other  
17 gentleman working with me at the moment could have an external  
18 hard drive and I could be taken to Brooklyn for court for a  
19 day and bring the computer, back it up and I can go back to  
20 MDC.

21 THE COURT: Okay. I'm just going to ask the  
22 Government to discuss with the lawyer at the MDC whether or  
23 not -- the Government understands what the issue is, right,  
24 the -- he just wants to periodically to be able to back up his  
25 information so that if it gets lost or whatever he won't lose

1 all his work. So is there a way that Mr. Siegel could come  
2 into the courthouse, if it has to be done at the courthouse, a  
3 copy can be made. If you could just send me a letter within a  
4 week. If they say that's no good just have him try to suggest  
5 some other way to do this.

6 MR. KENNER: Understood, Your Honor.

7 THE COURT: The last thing, Mr. Kenner, and what I'm  
8 going to do is I'm going to hear -- I have to hear this civil  
9 matter. I'm going to have to ask the Marshals to bring you  
10 back if you have a longer list of questions but -- Mr. Talkin,  
11 you can leave obviously but this part doesn't even have to be  
12 ex parte but on this issue of subpoenas that you're continuing  
13 to request again my view on that is until these issues get  
14 resolved and I decide what type of evidentiary hearing we're  
15 going to have for purposes of sentencing or not there is --  
16 I'm not sure what you're seeking subpoenas pursuant to. The  
17 hearing on the forfeiture is closed. So I don't know if you  
18 want to address that, Mr. Kenner.

19 MR. KENNER: If Your Honor had received my  
20 supplemental letter that I sent off to the Court on or about  
21 August 9th. I tried to give Your Honor a better description  
22 of what each of those relevant subpoenas would be -- why I  
23 needed them for a money judgment calculation or money judgment  
24 offset calculation with respect to forfeiture. So I tried to  
25 detail that in greater detail.

1 THE COURT: I'm going to hold off then until I  
2 consider the whole forfeiture issue as a whole. Whether or  
3 not there would be any basis for you to obtain additional  
4 information I think in my view awaits the outcome of all the  
5 briefing. I have to look at all the briefing and if I believe  
6 that there was some factual piece that was missing or that you  
7 should have an entitlement to reopen the forfeiture hearing I  
8 would consider it at that point. Okay?

9 MR. KENNER: Okay, Your Honor.

10 THE COURT: All right. So I'm just going to ask the  
11 Marshals to hold onto Mr. Kenner so I can hear the list.

12 Mr. Talkin, you're excused and Mr. Constantine,  
13 you're excused as well. The Government can go back to their  
14 office. If I think any of these -- these all relate to issues  
15 you're having with the jail itself?

16 MR. KENNER: Yes, sir, Your Honor.

17 THE COURT: I don't know if --

18 mR. HAGGANS: The Government will be available if  
19 the Court needs to resume. I would just -- before we separate  
20 if I could address just one minor matter.

21 I understand from the docket that Mr. Kenner filed a  
22 rebuttal on his Rule 6 motion and that there was an  
23 accompanying disk or set of documents. The Government's not  
24 received that. I don't know if he sent it by mail or has only  
25 sent --



1           THE COURT: Yes, we received the disk. I think a  
2 portion -- the memo got uploaded and not the exhibits I guess.  
3 Is that what happened?

4           MR. HAGGANS: I could check the docket again. All I  
5 see is basically the cover email from Mr. Kenner to Your Honor  
6 dated September 17th.

7           THE COURT: Okay. We'll have -- I guess the easiest  
8 way probably to give you -- for you to make a copy. You  
9 didn't send in a copy of the disk, did you?

10          MR. KENNER: I did not, Your Honor.

11          THE COURT: So we'll give you the disk and you can  
12 just copy it and give it back.

13          MR. HAGGANS: Thank you, Your Honor.

14          THE COURT: Thank you.

15 (Proceedings concluded at 2:26 p.m.)

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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

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6 Shari Riemer, CET-805

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